/224 cont./

171 /footnote 1 continued/ express an exigency of internal equilibrium. But let us take this isolated rapprochement only for what it would be: merely the bait for more extended controls. (Cf. Archives of the Sénatus Consulte at Aris.)

128 These cross-checkings /225/ thus remain to be done. Only they will be able to infirm or confirm, and consequently to endow with generality or not, the structural law that it is believed has been uncovered here.

121 The "Parcellary Orchestration" (1)

[114] 1. This expression is taken up again, while apologizing for its paradoxical aspect, from the article of 1948, where we set forth our first verifications.

181 Let us return to the Seksawa of the high valleys.
423 Their whole life is marked by a very precise division bearing
613 on three orders of facts. The ground is divided into individualized quarters. Time is scanned by the succession of "turns" or-
[805] ganized for irrigation, and the latter is not only an essential
[312] economic base, but a collective symbol, fixing the most vehe-
[592] ment aspirations of these rural people. The group is divided into ikhs-s, themselves distributed in conjugal families, but preserving a role, or rather assuming attributions. There prevails among these three orders of things an exact correspondence.
182 Easily decipherable in the present state, and despite degradations
423 and mutations, it inspires and maintains the deportment of the
613 montagnard, for whom it is at the same time an inveterate or-
[671] ganization, guarantee of persistence, and ideal of legitimacy.
[421] The local land law in this part of the Atlas has no aim other than

182 /225 cont./
423 to safeguard, against all causes of disturbance, and against indi-
613 vidual life in general, these correlations.
671
421 It is thus explained that, to the astonishment of the agrono-
423 mist, the order of irrigation is gentilitial. Contrary to what
312 economy of effort and the elementary concern to reduce losses
613 due to infiltration and evaporation would impose, it is not the piece of terrain made up of an ensemble of contiguous parcels that will profit from the turn for water, but the discontinuous domain of an ikhs: as dispersed, as distant on occasion as its fields may be, on that day the irrigation must skip over important intervals in order to go from one to the other. This discontinuity itself is the rule, because, in each of the quarters, each ikhs must have its share. All sorts of conservative mechanisms thereupon come to limit the possibilities of landed-property mutations: sales or successions, /226/ violent dispossessions. In the present state still, wherever the ground is flourishing, the techniques well preserved, the commune lively, this rotation of the water and this distribution of the parcels tend toward perfection. Whence it comes that the classic form of the property is neither the ample piece lying together nor even the cluster of neighboring fields, but a patrimonial sampling. The average cultivator has a hundred parcels at his disposal, each of which is sometimes reduced to a few square meters. The formula is not viable from an economic point of view. But what does it matter to the montagnard? He has, according to the expression of the native documents, "his name in every quarter." A distributive ideal is thus attained. It is also an ideal of variety. The parcels are defined by their fitting in among those of others having rights. The smallness of the areas helping, their limitation is not material, but personal, not topographical, but anthroponymic. That emerges clearly from local writings, where they are defined by the name of the quarter and of the four borderers, without any other precision of boundaries. The appurtenance to the ikhs and the insertion in such and such a quarter provide sufficient identification. A paradoxical trait in a peasant society where boundary conflicts are traditionally frequent.

/342 cont./

585 [428] 2) Right henceforth acquired by the wife to her part of inheritance anticipated by the law, that is, half of one part of the male heir, conforming to the fiqh. Her right to the acquests remains dependent on an extension of one year of common life.

Conventional part (and facultative in principle):

1) The chchard', "stipulated marriage settlement" by the bridegroom for the benefit of the bride;

2) The taking in charge, by the same, of the jihaz, "contribution of the bride into the community."

[788] [779] An official report of these conventions is drawn up in this case by literate men when the fâtih'a is pronounced; this is the only moment when an atmosphere of religious law reigns. A moment short and eccentric, in the proper sense of the term.

c) The "conjugal state," litihal. Its first aspect, to which are attached magical, sentimental, and moral notions, is that of cohabitation and procreation.

585 421 Under its second aspect, which is that of a society of work, it includes the right of the woman to her share of acquests (tizzla) among the other participants in the familial society (imezzalen), in equality with each of the latter, men or women, and once the deduction has been made for the contribution of the ones and the others. The marital contribution counts officially for a half out of the ensemble of acquests. That is a patrimonial praecipuum.

[562] The woman's right to her share is regarded as the counterpart of the tasks that custom imposes on her, according to a rigorous discrimination with regard to those that fall to the men. Today it is likewise regarded as compensation for the statutory modicity of the amerwas. This, however, is undoubtedly a reinterpretation.

586 562 d) "Dissolution," uluf. The repudiation pronounced by the man is always definitive. The woman's liberation is authorized by the delivery of a document, tabrat, which she often requests by the judiciary route at the same time as her share of acquests. The woman may, as in the fiqh, judicially request the dissolution of the marriage on grounds (cruelty, impotence, etc.), submitted

597 671 (428) /350 cont./ Trace perhaps of an old principle of magical continuity; the succession is broken by the lack of a link: the grandson does not inherit from the grandfather if the latter has survived the father. In the orthodoxy itself diverse subterfuges have obviated the rigor of this principle. But they have known limitations to which the Seksawa system was not bound any more than its recourse to "substitution," tenzîl, istirkâb, remained in the statistically restricted proportions of the Mussulman institution. But the true problem was elsewhere.

593 671 (881) The great event of the Seksawa family is the arrival of the child, boy or girl, at nubility, which makes him a co-operator. Questions are then found posed, which are all resolved, a remarkable thing, in a spirit, not of patriarchal indivision, but of /351/ accountancy. In effect, filiation creates rights at the same time as it does parents, and indeed beyond the mere capacity to inherit.

593 421 First, a right to benefit from the familial society, and from the share of acquests proceeding from it; over and above this, for the daughter, there is the right to the "dotal marriage settlement," jihaz, to the "trousseau," aruku, at the time of marriage, to maintenance in case of widowhood or need. The son's economic autonomy is accentuated again by the practice of seasonal or permanent emigration. Finally, the separation of the goods, separation of usufruct and administration at the very least, is frequently obtained by the children even during the lifetime of the father. The act then takes the form of a habous, of a ṣṣadaqa or of a waṣiyya. It is an anticipated testament in which often figures the strange stipulation by the constituent of a reserve for his benefit, which seems to imply immediate disseizin of the rest.

593 421 175 /The following two paragraphs are in small type in the original source./ Thus in 1028 Heg.: 1619, at Alus, in Idaw Geryun, a fiqh /sic/ of the a. Umgan and his wife make a donation, ṣadaqa, to their grandchildren, of a property from which they exclude a "margin": the parcel of Taglagelt.

Again at Alus, an act of 1061 Heg.: 1651 describes the distribution of a patrimony among brothers. They operate with all the guarantees of technique and equity: "full agreement,

/351 cont./

593 421 175 evaluations, drawing of lots, convention, measuring." Moreover, the distribution is performed "in front of the jemâa, with the reed, according to the boundaries and by the drawing of lots, and followed by the taking of possession in the presence and under the auspices, bi-wajh, of the father." The latter reserves for himself, the same as the mother, a margin, h'âchiya. All this under the presidency of the grandfather, the chaykh /sheik/ Sa^{c}îd b. ^{c}Abdallah. Patriarchal ambiance, but careful about preconstituted proofs, communitarian, but accountable. This double aspect of the Chleuh /Shluh/ institution stands out nearly everywhere.

593 421 Such a practice, in which both the patrimonial permanence and the autonomy of the person are combined, passes only distorted into the acts to which it gives rise. A discordance breaks out at this place between the juridical base and the form that it has assumed: the latter depends on the free disposition, indeed even the liberality, of the father; but it is not very probable that this tie expresses the authentic climate. The latter is indeed one of a veritable right exercised by the son over the father, still alive, in the name of a certain solidarity among them all concerning the ancestral patrimony, and with a view toward freeing the initiative of each rightful claimant in the realization of the "augments," zawâid (1).

1. It happened this very year that in Demsira, taqbilt of the Irohalen, some children came to claim against their father, still alive, the right to divide /this footnote is continued on the following page in the original source/ the land. One finds, in another Moroccan domain, this attempt having passed to the stage of jurisprudence, R. J. cout., No. 2, 1951, pp. 8 sq. (B. Zeggu of Ahermoumou).

To amass, to round out the plot by /352/ progressively nibbling at the slope or the forest, to accumulate from generation to

/352 cont./

593 generation, like new sediments, humble advances that the labor
• 421 of man realizes, such is the peasant ideal that this classic form of the proceedings reveals. Primus brings against Secundus a chchfâa resulting from the existence of a habous set up by his great-grandfather. The purchase consented to by the father of Primus, which Secundus is referring to, is then null. But Secundus demonstrates that the foundation only dealt with an area far smaller than the landed property now claimed and that such-and-such extensions were realized, after the habous, by the grandfather and the father. The discussion is then oriented toward verifications of the civil state of the parcels by the production of old "nominative inventories," jrida.

613 The division of labor between these familial co-operators
423 coincides most often with a landed-property indivision that may branch out, over the lapse of several generations, indeed over the whole history of an ikhs, into monstrous juridical arborescences.
[428] The woman inheriting, in principle, on the pattern of the fiqh, the minors and incompetents are then found most often enlisted in vast agnatic solidarities, whose abuses find a corrective in the insecurity of established situations, imprescriptibility of rights, and criticism of origin to which this milieu untiringly delivers any possessions. Here again a sort of equilibrium at term is realized. In time it is true: and several generations sometimes pass before there is recovery. The disappearance of such-and-such individuals, of such-and-such families, by "extinction," for example, inqirâd', a theme that recurs quite often in the old acts, is not free from ending in the constitution of a certain margin of "goods without master," closely inventoried moreover in the consciousness of the group, and which, tacitly, are the appanage of the powerful of the day. Premium for individual appetites, and rudiment of a domainal one.

613 Thus individual depredation and communal constraint encircle
671 the life of the ikhs. The modern law of the Seksawa has perhaps made out of the exuberance relations of action and of reaction established, on both sides of the ikhs, by these two rivals. Doubtlessly the gentilitial structure, evoked by unwritten laws of the

/383 cont./

671 thirteenth century, it creates the communal convention. It is by
[799] a contract.

One thing nevertheless remained inassimilable even though it tried to absorb it into the accommodating Malékite /Maliki/ opportunism of the maçlah'a. This is the faculty of legislating (1).

1. De Ligniville, "La coutume privée des ait ᶜAt't'a du Sahara /The private custom of the ait ᶜAt't'a of the Sahara/," in CHEAM, 1937, gives interesting details on some important legislative modifications decided by means of ekklêsia: right to inherit granted to the woman, the suppression of the character, executory with respect to marriage, that was given to the application of henna to the conjoints, the husband's designation of ten men prohibited to the repudiated wife, alleviation of the levirate, the introduction of the waly, etc.

Laic faculty in its foundation, democratic in its exercise, unlimited in its applications. Two examples of it have already
[421] [586] been cited: a procedural deliberation over property, and another over the status of the wife and her right to autorepudiation. Two
671 794 other deliberations, quite recent, have governed the distribution of the offerings of Lalla Aziza and of Sidi Mh'and of Ammern. In both cases the jemâa of the Seksawa had to be aware of the finances of its saints. And although these deliberations have been provoked in our day by a foreign initiative, on grounds a little experimental, they nonetheless include a lesson. It was only to observe the naturalness, the gravity with which the assembly took hold of matters so exorbitant of everyday life — at least to our eyes — in order to understand that to its people its competence extended not only /384/ to the temporal administration, not only to the status of persons and goods, to the whole matter of the

/388 cont./

671 passed over in a block to the principles of importation, to the
779 point that it is necessary to look very attentively and very far in
182 order to find what it dissembles. More intact, marriage combines, to the exclusion of any liturgical aspect, old practices marking the communitarian intensity and a very acute contractual character. In this genre the institution, which comes to a sort of co-operative ratiocination, outbids Islam. Under this strong notion of individual acquests, under the adjacent ideas on which depend the parsimony of the emigrant serving for the resiliation of sales, or the peasant parsimony serving for their consolidation, or the bitter dispute between the familial inheritance and the avarice of each one, are glimpsed a play of investments and almost of agio, a permanent inflation brought by the abundance of importations of cash and the scarcity of land: so many traits that one cannot consider as recent.

671 Quite on the inverse, here is its very modern cachet. The
675 mobility of civil rights attains an almost citylike rhythm here.
421 The personal value of the obligation, the element of intuitus
182 personae inherent in the contract disappear before a great latitude of negotiation and interchangeability. Thus in the twuliya, "transfer of the rights of the taker, "in the istidkāl, "transfer of successoral rights," and in the unconditional capacity to constitute "mandatory," lukil. The formularies are applied to render by redundances the substitution thus realized. One reads, for example, in a twuliya of the a. Umgan, 906 Heg.: 1654, the following expression: tawlīya ṣah'īh'a wa'starkaba-hu fī sarījati-hi wa nazzala-hu fī mah'alli-hi, "valid transfer: he had it get up on his saddle (cf. chl. /Shluh/ tarikt, name given to the substitution), and put it (lit. "got down," cf. chl. /Shluh/ verb zuggez, in the same sense) in its proper place." Transmissibility of contractual obligations, infinite play of credit, freedom in representation: all that constitutes a sort of rejoinder to the unwritten laws of the equilibrium between ikhs-s and of patrimonial permanence. This agility of the mobilizations and substitutions extends even to the most unexpected objects, and which one would believe most bound to the identity, truly mystic.

/388 cont./

671 of the person: shares of benefice of a saint, tisura (trans. of the
675 Arabic futūh'āt), of the right to mutual assistance, tiwizi, of
421 "protection," etc. There one /389/ is at the very antipode of
182 what one imagines of an "ancient" law.

What is to be said about this division of labor that not only
671 qualifies, in the landed-property procedure, judges outside the
182 group, but jealously denies competence to the temporal chief?
[692] These careful delimitations, although undoubtedly from the most authentic foundation of the Chleuh /Shluh/ society, appear irreducible to archaism. Nevertheless the splitting of the judiciary instance obeys exigencies of recourse to the outside, of pause in the course of the joust, and, in short, of rejection of responsibility by the group, which express obscure traditional sentiments. This gives rise nonetheless to a procedure of scholarly type, written and aspiring to cityness. Traits undeniably "advanced": condemnation by default that the codifications anticipate, fine for nonexecution of the sentence or for failure to answer a summons, this last motif recurring constantly.

681 The penal law, up to a very recent period, has been admin-
182 istered by the jemâa. The latter has never really given it up. It
[634] is even for this purpose that it deploys the most initiatives and most willingly exercises its legislative function. But let us note that this penal law, based on pecuniary composition, a composition duly tariffed, evinces a singular institutional maturity. While the gentilitial structure inspires the agrarian order, it is effaced, in the penal one, before something that is clearly of the public law, and felt as such.

695 The plural oath has retained its role. It concludes all litiga-
182 tions that the writing does not determine. But this restriction is
[691] already quite important. And moreover, even where it keeps all its value, the oath has been driven into a reduced position: no longer of sworn law -- but of a second element of a procedure begun on an intellectual and profane plane. The richness of the elements of magico-religious order that one finds here and there in this part of the system cannot efface the contrary aspects, which are also striking. Certainly it is possible to suppose that